Dodger Theatricals Holdings, Inc. and its successor Dodger Theatricals, Ltd. *and* Actors' Equity Association. Case 2–CA–36048

August 22, 2006

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

On March 28, 2006, Administrative Law Judge Steven Fish issued the attached decision.[1] The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party each filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Dodger Theatricals Holdings, Inc. and its successor Dodger Theatricals, Ltd., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(a).

"(a) Promptly furnish the Union with the information it requested in its letters of December 19, 2003, and January 27, 2004, as later modified by the Union to limit its request to information subsequent to March 29, 2002."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C August 22, 2006

Peter C. Schaumber,	Member
Peter N. Kirsanow,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Actors' Equity Association, by refusing to furnish it with information that it requests that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights set forth above.

WE WILL promptly furnish the Union with the information it requested in its letters of December 19, 2003, and January 27, 2004, as later modified by the Union to limit its request to information subsequent to March 29, 2002.

DODGER THEATRICALS HOLDINGS, INC.

Rhonda Gottlieb, Esq., for the General Counsel.

Lawrence D. Levien, Esq. and *Laura E. FitzRandolph, Esq. (Akin, Gump, Strauss, Hauer & Feld, LLP)*, of Washington, D.C., for the Respondent.

Franklin E. Moss, Esq. and *Lydia Sigelakis, Esq. (Spivak, Lipton, Watanabe, Spivak, Moss & Orfan, LLP)*, of New York, New York, for the Charging Party.

[1] On April 6 and 13, 2006, the judge issued "Errata" correcting inadvertent typographical errors, amending his conclusions of law and recommended Order, and amending the notice.

[2] In adopting the judge's 10(b) finding, we agree that *Southern California Gas Co.*, 342 NLRB 613 (2004), is distinguishable, and therefore we find it unnecessary to pass on the judge's extended discussion of that case.

[3] Member Schaumber does not necessarily agree with Board precedent that a union can simply state a reason for its request for information without giving any factual basis for the same. See *Hertz Corp. v. NLRB*, 105 F.3d 868, 874 (3d Cir. 1997). He would, however, find a violation where the union apprises the employer of its factual basis at the unfair labor practice hearing, the union's disclosure supports the relevancy of the information, and the employer continues to withhold it. See *Contract Flooring Systems*, 344 NLRB No. 117 (2005). Member Schaumber would find the violation occurred when the Respondent refused to provide the requested information after the Union apprised the Respondent at the hearing of the facts underlying its belief that the Respondent was affiliated with Big League Theatricals. This change in the date of the violation would have no effect on the remedy. The Respondent will be ordered to furnish the Union with the information requested.

[4] We will modify par. 2(a) of the judge's amended recommended Order to correct an inadvertent error, and we shall substitute a new notice to conform its language to the recommended Order as modified.

DECISION

STATEMENT OF THE CASE

STEVEN FISH, Administrative Law Judge. Pursuant to charges filed in Case 2–CA–36048, on January 16, 2004, by Actors' Equity Association (the Union or Equity), the Regional Director for Region 2 issued an order consolidating cases, consolidating the above case with charges filed by Equity in Cases 2–CA–36027 and 2–CA–36069, and alleging that Dodger Theatrical Holdings, Inc. (Respondent or the Dodgers) and two other Respondents Clear Channel Entertainment (Clear Channel) and Nederlander Producing Co. (Nederlander) violated Section 8(a)(1) and (5) of the Act by refusing to supply information to the Union.

Subsequently, Cases 2–CA–36069 and 2–CA–36027 were severed from Case 2–CA–36048, based on non-Board settlements in the above cases.

The trial with respect to the portions of the complaint dealing with the Dodgers in Case 2–CA–36048 was held before me in New York, New York, on November 16 and the December 2, 2005. At the trial, the complaint was amended to reflect the current and correct name of Respondent as Dodger Theatricals Holdings, Inc. and its successor Dodger Theatricals, Ltd.

Briefs have been filed by the parties, and have been carefully considered. Based on the entire record,[1] including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Respondent is engaged in the production of theatrical plays and musicals. Annually, Respondent purchases and receives at facilities located in New York State goods and materials valued in excess of $50,000 directly from points located outside the State, of New York.

It is admitted, and I so find, that Respondent is an employer engaged in commerce within the meaning of Section (2)(6) and (7) of the Act.

It is also admitted, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

A. Background

Respondent produces Broadway, Off-Broadway, and touring shows. The two current principals of Respondent are Michael David and Edward Strong. They have been involved with a number of different entities over a 20-year period, using the name "Dodger" in its name, often with different partners or coproducers. All of these entities are referred to as "The Dodgers." When the Dodgers produce a show, it is often produced jointly with other producers or production entities.

The League of American Theatres and Producers (the League) is a trade association for producers and theater owners, that negotiates collective-bargaining agreements with Equity, as well as with other labor organizations. Equity represents actors and stage managers in the theater industry. Equity and the League have been parties to a contract, which is also used by some nonleague members, and is known as the production contract. Respondent and the League were parties to the production contract, effective from June 26, 2000, through June 27, 2004. While Respondent withdrew from League membership in 2001, it was still bound by the agreement until it expired. The Dodgers, although not currently League members, were coordinated bargaining partners in the negotiation of the new agreement which runs from June 2004 until June 2008, and are signatories to that agreement as independent producers.

The recognition clause of the production contract defines the unit as "all the Actors (Principals, Chorus, Extras, Stage Managers and Assistant Stage Managers.)"

Additionally, rule 8 of agreement is entitled, "Binding Effect of Agreement." It reads as follows:

> All contracts of employment signed pursuant to these Rules are binding not only upon the signers on the face thereof, but upon any and all corporations, copartnerships, enterprises and/or groups which said signers or each of them directs, controls, or is interested in and are hereby agreed to be adopted as their contract by each of them.

At times various producers have negotiated modified versions of the production contract with Equity, for particular productions, often on tour, but sometimes for a Broadway show.[2] In such cases, the parties agree to be bound by the production contract, with whatever modifications that the parties agree on.

B. The Prior Information Request

On March 19, 2001, Alan Eisenberg, executive director of the Union, sent a letter to Respondent's principals, David and Strong, requesting information concerning the relationship between the Dodgers and Big League Theatrical LTD (BLT). The letter indicates that Equity is concerned that Strong, David, and the Dodgers "have and are diverting productions covered by the Production contract" to BLT.[3] Thereafter, on July 12, 2001, Equity filed a charge in Case 2–CA–33920, alleging that Respondent violated Section 8(a)(1) and (5) by failing to provide a relevant information to the Union.

On December 21, 2001, the Regional Director issued a complaint and notice of hearing alleging that Respondent (as well as Strong and David individually, as joint employers) violated Section 8(a)(1) and (5) by refusing to supply information to the Union, relevant to the Union's performance as the collective-bargaining representative of Respondent's employees. Although the record is not totally clear, it appears that the genesis of the Union's request was a tour of the show *Music Man* by BLT and its affiliates. In that connection, the Union also attempted to organize the employees of the tour of *Music Man* in Case 2–RC–22544. In that case, an election was directed and held on November 1, 2002. The Union lost the election, and filed objections which were dismissed by the Regional Director. The Union sought review, and the Board affirmed the Regional Director, and dismissed the objections, with Member Liebman dissenting.[4]

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[1] Subsequent to the close of the trial, I granted in a conference call, Charging Party's motion, which was not opposed, to introduce two additional documents into the record.

[2] For example, Respondent and Equity entered into such an agreement concerning the show *Jersey Boys* by which the production contract was incorporated by reference, and modified slightly.

[3] The request encompasses information with regard to relationships with and transactions between Respondent and BLT since July 1, 1996. It requested 38 specific items of information.

[4] *Big-Brass Band, LLC*, 339 NLRB 973 (2003). While the name of the employer in the above case is *Big-Brass Band, LLC*, all parties

Meanwhile, the Dodgers had produced a revival of the show *42nd Street* on Broadway. However, the Dodgers decided not to produce a national tour of that show under the production contract for financial reasons. Thereafter, Equity and Respondent began negotiations in an attempt to agree on a modification of the production contraction for a tour of *42nd Street* by Respondent. The parties were successful in negotiating such an agreement, and reached an understanding in principle on March 29, 2002. As part of that agreement, the parties agreed to resolve all of their prior outstanding disputes, including the aforementioned information request and NLRB complaint. On March 29, 2002, the parties executed a "settlement agreement and release," which confirmed the understandings reached, and included the agreement by Equity to withdraw the unfair labor practice charge in Case 2–CA–33920. The settlement agreement and release, reads as follows:

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into effective March 29th, 2002 by and between Actors' Equity Association ("Equity") and Dodger Theatrical Holdings, Inc. ("Dodger"), herein singularly referred to as "Party" and collectively referred to as "The Parties."

WHEREAS, due to, as is contemplated in, and as a part of the agreement regarding *42nd Street*, the Parties wish to resolve all differences and disputes between them and their constituents that were or could have been raised regarding certain matters;

NOW, THEREFORE, the parties agree as follows:

1. Equity agrees that it will promptly request withdrawal with prejudice of the unfair labor practice charge that it filed on or about July 12, 2001 with Region 2 of the National Labor Relations Board ("NLRB") against Dodger, Dodger Endemol Productions, Edward Strong and Michael David, Case No. 2-CA-33920. Equity further agrees that it will take any and all appropriate action to ensure that the December 21, 2001 complaint issued in that case by the NLRB is withdrawn and dismissed with prejudice. In the even that the NLRB does not withdraw the complaint, Equity agrees that neither it nor its representatives or agents will voluntarily assist in the prosecution of such complaint.

2. Further, Equity irrevocably releases and discharges Dodger and its present and former officers, directors, employees, agents, representatives, affiliates, parents, and subsidiaries (hereinafter collectively referred to as ("Dodger Released Parties") and Dodger irrevocably releases and discharges Equity and its present and former officers, directors, employees, agents, representatives, affiliates, parents, and subsidiaries (hereinafter collectively referred to as "Equity Released Parties") (Dodger Release Parties and Equity Released Parties hereinafter collective referred to as "Released Parties") from any and all grievances, claims, or causes of action and any and all alleged damages or requested relief in relation thereto, whether arising under contract or by operation of statutory or common law, and whether known or unknown, which either party now has or may have had, arising before the date of this Agreement, in any way relating to any alleged relationship with, connection between, or interaction among any or all of the Released Parties and Big League Theatricals ("BLT") or any or all of BLT's present or former officers, directors, employees, agents, representative, affiliates, parents or subsidiaries in any way pertaining to the business or operations of BLT. It is understood that this release includes, and that neither Party will assert a claim or cause of action or seek damages of relief against any of the Released Parties in relation to, the previously mounted and ongoing BLT tour of *The Music Man.* It is further understood that nothing in this Agreement shall limit Equity's ability to engage in any otherwise lawful activity with respect to such tour of *The Music Man.*

3. It is further agreed that neither Party will make, file or join in, or assist or encourage others in making or filing, any grievances, charges, claims, lawsuits, complaints, or other proceedings, including but not limited to any suits in the local, state or federal courts, before the National Labor Relations Board or any other agency, or before any arbitral board or tribunal, against any of the Released Parties, concerning or relating to any matter described in Paragraph 2 of this Agreement.

4. A Party shall be entitled to recover costs and reasonable attorneys' fees incurred in defending against any claim or cause of action brought in violation of or in enforcing the terms of paragraph 2 or 3 of this Agreement.

5. This Agreement shall be binding upon and inure to the benefit of the assigns, affiliates, members, employees, officers and representatives of Equity and the assigns, affiliates, subsidiaries, parents, employees, officers and representatives of Dodger.

6. This Agreement may be modified or amended only by a written agreement executed by all parties hereto.

7. This Agreement may be executed in one (1) of more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. If any terms of the Agreement are found null, void or inoperative for any reason, the remaining provisions will remain in full force and effect. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties.

Entered into this 29th day of March, 2002.

On April 12, 2002, Equity and the Dodgers executed the previously agreed contract covering the *42nd Street* national tour. On April 12, 2002, Equity requested that the Regional Director approve the withdrawal of the charges and the complaint in Case 2–CA–33920. On May 9, 2002, the Regional Director issued an order approving the charge and dismissing the complaint in such case.

C. The 2003 Information Request

By letter dated December 19, 2003, Eisenberg wrote to Respondent once again, this time asserting that it had learned that BLT will be sending out a non-Equity tour of *42nd Street*, and that the Union was concerned that Respondent may have diverted work to BLT, or maintained BLT as a Dodger alter ego.

Therefore the Union requested information from July 1, 2000, with regard to the relationship between BLT and the

appear to agree that BLT was an employer of the employees on this tour.

Dodgers. The request asks for 10 items of information as described below:

December 19, 2003

Michael David
Ed Strong
Dodger Stage Holding Theatricals, Inc.
230 West 41st Street
New York, NY 10036

Gentlemen:

We have recently learned that Big League Theatricals will be sending out a non-Equity tour of 42nd STREET.

Equity is concerned that Dodger Stage Holding Theatricals, Inc. or its affiliates ("Dodger") may have diverted work to Big League Theatricals or its affiliates ("Big League") or have participated in maintaining Big League as a Dodger alter ego. In order to investigate whether to file a grievance and to prepare proposals for the 2004 negotiations concerning the diversion of Production Contract work to producers that do not provide area standards terms and conditions of employment, I am writing to request the following information covering the period from January 1, 2000 to the date of your response.

1. State the name of each Dodger affiliate that has had a general partnership, limited partnership or other financial interest in any Big League production.

2. State the name of each Dodger affiliate that has ever had an ownership interest or option with respect to any rights involved in any Big League production(e.g., music, book, designs, etc.), and describe the nature of that ownership or option interest.

3. Provide copies of all agreements and contracts by virtue of which Dodger affiliate has assigned to any other person or entity, any ownership or option interest with respect to any musical or play that has been produced by Big League.

4. Identify employees of Dodger who have been employees, shareholders, officers, directors or partners of Big League, describing the partnership, stock ownership, director, officer or employment status of each such individual.

5. Describe each financial transaction between Dodger and Big League.

6. Describe each contractual arrangement between Dodger and Big League.

7. Describe each joint venture between Dodger and Big League.

8. Identify by production (if any), type of service, personnel involved and date, each occasion when Dodger employees performed services for or to Big League.

9. Identify by production (if any), type of service, personnel involved and date, each occasion when Dodger employees performed services for or to Big League.

10. Identify all plays and musicals in which Dodger had a financial or managerial interest which subsequently were produced by Big League, and for each such play or musical, describe all financial transactions, business dealings and other interactions between Dodger and Big League.

I look forward to your prompt response. If an accommodation cannot be made by January 12, 2004, I am prepared to file an unfair labor practice charge.

Sincerely yours,
Alan Eisenberg
Executive Director

Cc: Franklin K. Moss, Esq.

This information request is similar to the 2001 information request, except that it is less extensive. However, it essentially requests much of the same information requested by Equity in its 2001 letter.

The charge in the instant case was filed on January 7, 2004.

On January 12, 2004, Respondent's counsel, Lawrence Levien, responded to Eisenberg's request by sending the Union's counsel, Franklin Moss, a copy of the aforementioned settlement release agreement, and stating that in light of the document, he was perplexed by the request and asked that it be withdrawn.

Moss responded by letter of January 15, 2004, asserting that the March 29, 2002 release applies to claims "arising before the date of this Agreement," relating to the relationship between the Dodgers and BLT, as well as to claims concerning the "*Music Man*" tour. Moss added that it does not apply to an information request in 2003.

Levin responded by letter of January 22, 2004. Levien reiterated his position that the Union's 2003 information request violated the March 29, 2002 settlement agreement, and pointed out the similarity of some items in the two requests, and requested that the Union explain why the 2003 request was not encompassed by the settlement agreement.

Moss responded as follows, by letter dated January 27, 2004.

Lawrence D. Levien, Esq.
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036

Re: Actors' Equity Association and the Dodgers

Dear Larry:

I am bewildered by your January 22, 2004 letter. Among other things, while the ULP was withdrawn "with prejudice," there was no discussion, nor is there anything in the Settlement Agreement and Release, to suggest that the information request itself was withdrawn "with prejudice," nor is there anything in the Settlement Agreement and Release prohibiting Equity from making a new information request.

Moreover, paragraph 2 of the Settlement Agreement and Release does not prospectively "specifically release the very type of grievance set forth on the December 19 letter." It does release certain claims for the period prior to March 29, 2002 (and certain "*Music Man*" related claims prospectively), but we see information as to that prior period not in order to present a claim with respect to that period, but to ascertain facts that would permit a *current* claim to be filed and to obtain information to assist in the preparation of proposals for out *future* collective bargaining negotiations. If, prior to 2003, there was a material change in the nature of the relationship between the Dodgers and Big League, and you provide Equity with all requested documents detailing that change and the nature of the relationship following that change, information covering the period prior to that change will have little relevance to the present and we will not require information for

the period of time predating such change.

With this clarification, I trust the Dodger will fully comply with the information request.

Very truly yours,
Franklin K. Moss

Respondent failed to provide the information requested, but instead filed a notice of dispute with Equity, contending that the Union violated the settlement agreement by filing the January 7, 2004 charges with the Board. Respondent sought withdrawal of the charges and attorney's fees and costs in both defending the unfair labor practice and prosecuting Respondent's grievance.

The Union responded by filing an additional unfair labor practice charge on August 30, 2004, in Case 2–CA–36489, alleging that Respondent violated Section 8(a)(1) of the Act by "pursuing a meritless grievance in retaliation for the Union's filing of unfair labor practice charges."

Thereafter, after several letters, meetings, and discussions between the parties, Equity and Respondent agreed to resolve the most recent unfair labor practice charges filed, and the Union agreed to limit its information request to the period subsequent to March 29, 2002 (the date of the settlement agreement.) As a result Respondent withdrew its grievance and its unfair labor practice charge, and Equity withdrew its retaliation charge.

Respondent has admittedly failed to provide the information requested in the Union's 2003 letter[5] covering the period since March 29, 2002.

Flora Stamatiades, Equity's national director of organizing, testified concerning the basis for and relevance of the Union's information request. She had previously served as a business representative for Equity, as well as business representative for road touring.

Stamatiades first became familiar with BLT in her capacity of business representative for tours. She was informed by some acquaintances who worked there, that the Dodgers and BLT shared office space at 1501 Broadway, New York, New York. She was told at one time that the entities were in the same suite, and then at another time, were in separate suites in the same building.

Stamatiades also began to notice a progression, that a number of shows that were produced by the Dodgers either on Broadway or on a national tour by the Dodgers would then result in another non-Equity tour, produced by BLT. Some of these shows included the *The King and I, Tommy, Footloose,* and *A Funny Thing Happened on the Way to the Forum.*

Stamatiades had discussions with Equity members employed by the Dodgers either during these tours or on Broadway, during which the subject on non-Equity tours would come up. During these discussions, the members would tell Stamatiades that BLT and the Dodgers were "one company," and asked her "Why can't we stop Big League because we all know, we believe, and see this relationship between Big League and the Dodgers?"

Equity began to investigate the issue in 2000 and 2001, prior to its 2001 information request. It obtained a report from the New York State Secretary of State, which listed Elaine Warner as chairman CEO of BLT. Another document obtained by Equity from the internet showed that Elaine Warner was the wife of Sherman Warner, who Stamatiades knew to be a principal of the Dodgers. Stamatiades, although familiar with most individuals actively engaged in the theater industry, had never heard of or known Elaine Warner to be active in the industry.[6]

Stamatiades was also informed that sometime between 1997 and 2000 that Jonathan David, Michael David's son was a corporate officer of BLT. Equity subsequently obtained, through a search from a commercial service with respect to corporate identities, a document, which is not dated. It shows that Jonathan David held the position of "Chairman" of BLT.[7]

Stamatiades was also informed that representatives of the Dodgers "encouraged" the estate of Meredith Wilson to award second-class touring rights of the *Music Man* to BLT, when the Dodgers decided not to produce their own tour of that show. She also testified that she believed that the Dodgers also encouraged the award of such rights to tours of *Tommy* and *Footloose* to BLT.

As a result of the above information, Equity filed its 2001 information request as described above, which resulted in an NLRB complaint. As also noted, the complaint, as well as the underlying charge were withdrawn, based on a settlement agreement, which was in turn precipitated by an agreement to modify the production contract, and permit a tour of *42nd Street* by the Dodgers.

In the course of Equity preparing for negotiations for a new contract with the League, Equity noticed an article in *Back Stage*, which is a trade publication which reports on the theater industry. The article which is dated May 2003, reported on the issue on non-Equity touring. The article states that BLT is a subsidiary of the Dodgers. The thrust of the article is the rise of non-Equity tours. It contained several quotes from Dan Sher, identified as the executive producer of BLT, defending the use of non-Equity tours, as serving actors who are gaining experience, and serving communities that might not get major tours. The article also suggests that Equity, unlike other Union's in the industry, is being inflexible not allowing its members to work in non-Equity productions. The article states further that Equity officials refused to comment on the subject.

In late 2003, Stamatiades had conversations with Equity members who were performing on the Dodgers tour of *42nd Street.* The members told her that they were aware that the agreement covering the tour was due to expire on June 27, 2004, and that they were hearing discussions that there would be a subsequent non-Equity tour operated by BLT. The members informed Stamatiades that representatives from BLT would be at various touring engagements looking over items such as sets, costumes and discussing a non-Equity tour of the show. Some of the members made comments to Stamatiades, similar to those made to her in prior years by other members, such as "Why can't we stop Big League?, because we all know we believe, we see this relationship between Big League and the Dodgers."

Stamatiades also became aware that BLT used the same art-

[5] The Union clarified its request by a letter from its attorney, dated January 27, 2005, with regard to a typographical error in the original letter.

[6] Stamatiades conceded, however, that she knew that although Sherman Warner had been a principal with the Dodgers, that he retired from and was no longer associated with the Dodgers as of late 2000 or early 2001.

[7] The document also lists affiliated entities as "Mane Co., L.L.C." The Dodgers are not mentioned in this document

work as the Dodgers for various shows such as the *The King and I,* and *42nd Street.*[8]

Stamatiades also was aware that BLT and the Dodgers were represented by the same attorney, and that she believed that there was a relationship between the two companies, because the names of both companies consist of baseball references.

Finally, Equity procured a document from the internet[9] which appears to be a resume of a theater producer and director named Kurt Wollan. The resume states that Wollan "produced three national tours of *Forbidden Broadway* with Big League Theatricals and Dodger productions of New York."

Based on the above evidence, Equity believed that there was a relationship between BLT and the Dodgers, and that since rule 8 of the contract, makes it binding upon signers, as well as also upon enterprises which the signer "directs, controls or is interested in," there is the possibility of filing a grievance based on that rule. Thus, Equity needed to find out more information in order to understand the exact interrelationship between BLT and the Dodgers, and to decide whether or not to file a grievance, based on violation of that contractual provision.

Stamatiades also testified that Equity needed the information in order to prepare for negotiations of a new contract with the League. In that connection, negotiations began on April 1, 2004. During these negotiations, Eisenberg on behalf of Equity, complained about the alleged diversion of work by League members. Eisenberg specifically mentioned the Union's belief that there was a relationship between League members such as the Dodgers, and non-Equity tour companies such as BLT and others. He also mentioned specific tours such as *42nd Street,* and other shows, such as *Oklahoma* and *Oliver,* that were alleging being diverted by League members including the Dodgers.

The Union submitted two proposals during the negotiations, in order to address its concerns about diversion of work. They included a proposal that entitled "Preservation of Work," which provides that if a producer divests itself of touring rights, the producer agrees to require that the actors employed on such tour shall reserve wages and benefits under the agreement. The proposal further provides that if a producer does not transfer such rights but the producer receives compensations as a result of a touring production where actors receive less than contract wages, then the producer must pay 50 percent of such compensation to the Equity Health Fund.

While David was present at the negotiations, neither he nor the negotiators for the League, Bernard Plum or Seth Popper,[10] denied the Union's accusations that there was a relationship between the Dodgers and BLT or between the other companies and other non-Equity entities. The League negotiators did respond that the Union had filed unfair labor practice charges seeking to find out if that assertion is accurate, so "that will come out in the wash." With respect to Equity's proposals the League negotiator stated that they were "ridiculous" and was not addressing the real issues. That issue is that the reason why work is not being done under the production contract is because it was economically not viable to do so. The negotiations then proceeded to discuss those issues. An agreement was reached in July 12, 2004. The agreement did not contain either of the proposals advanced by the Union to address their concerns about alleged diversion of work. It also contained no changes in the recognition clause, and also included rule 8 without change. In fact no changes were proposed in either of these clauses by either side.[11]

Respondent produced Morse and Popper as its witnesses. Morse, has been an employee of Respondent since 1995. Prior to that date, she worked in various other capacities in the industry, including a period of time as an official of ATPAM (Association of Theatrical Press Agents and Managers.)

Morse furnished testimony concerning some of the areas testified to by Stamatiades with respect to Equity's belief that BLT and the Dodgers are related entities. In that regard, Morse testified it is quite common in the theatrical industry for unaffiliated entities to share office space. Morse provided several examples of unaffiliated companies that share office space in the industry. Further, Morse testified that BLT and the Dodgers never actually shared space. Morse asserted that Dodger Touring, LTD, which is the booking agency for the Dodgers did sublet space from BLT. The rest of the Dodgers organization was located on a different floor in the building at 1501 Broadway, from 1995–2002. In 2002, the Dodgers and Dodger Touring moved together to larger space on 41st street.

Morse also asserted that sometimes newspaper articles about the theater industry are inaccurate, and provided an example of where the New York Times in an article about *Jersey Boys* discussed the director, Des McAnuff. According to Morse, the article stated that McAnuff had directed the show *Good Vibrations,* which was inaccurate, and that McAnuff had no connection whatsoever to that production.

Morse also testified that it is not unusual for theatrical resumes to contain inaccuracies. Morse also testified that she had never heard of Wollan and that there is no such entity as "the Dodger Group."

Morse also asserted that the Dodgers grant permission to publishers of songbooks to use Respondent's artwork for particular shows. She further testified that the artwork for shows on songbooks for the shows *Footloose, 42nd Street,* and *Funny Thing Happened on the Way to the Forum* were identical to the artwork used by Respondent when they produced the show either on Broadway or on a tour. According to Morse, the Dodgers would grant such permission to the songbook publishers, because "it's free advertising in a sense. But additionally if the author requests that we permit use of the artwork, we're unlikely to deny it."[12]

Morse added there is no relationship between Respondent and any of the songbook publishing companies. Respondent also introduced the rights agreements between the authors and the producers for various shows such as *42nd Street, The King and I,* and *Footloose.* These documents reflect that any entity that desires to use the Dodgers' original artwork for these shows must ultimately obtain permission to do so from either the author, owner, and the licensor, and or from the Dodgers.

Finally, Morse in response to Stamatiades' belief that the

[8] Additionally, Stamatiades was unaware of any Dodger production that was ever performed on a non-Equity tour by anyone other than BLT. This record contained evidence of seven BLT tours, six of them, all but *Miss Saigon,* originated with the Dodgers.

[9] The search was made by Equity on February 20, 2004.

[10] Plum is an attorney and the League chief negotiator. Popper is director of labor relations for the League.

[11] My findings with respect to the discussions during the 2004 negotiations, is based on a compilation of the credible portions of the testimony of Stamatiades, Popper, and Sally Campbell Morse, Respondent's general manager.

[12] Morse conceded on cross examination, that it was not the Dodgers practice to provide the advertising for their competitors; since "we would be advertising the competitor's product."

names of BLT and Dodgers were both related to baseball, was asked what she understood the reference "Big League" to refer to? Morse responded that she had not "over-analyzed" it, but she assumed that BLT was "trying to be a little grander than it was," and was an ambitious reference to being "bigger than the Leagues that existed." Thus in Morse's view, "League" in the business meant the League of American Theaters.

Morse also provided substantial testimony concerning the issue of "first-class" and "second class" tours, and her view as to contract coverage of the production contract to these kinds of tours. Morse testified that when a producer, such as Respondent produces a show, it must first obtain the rights to produce the show from the author or from a licensing agent, which has been designated by the author or the author's estate. There are many different kinds of rights that can be obtained, including "first class," "second class," "off-Broadway," "stock" and "amateur." These terms are defined in the Approved Production Contract (APC), which is a model contract that reflects the minimum terms under which members of the Dramatists Guild will grant rights to their work. The APC defined "first class performance," as

> Live stage productions of the (work) or the speaking stage . . . under Producer's own management in a regular evening bill in a first-class theatre in a first class manner with a first class cast and a first class director. Second class performances are described in the APC as all performances . . . other than stock, amateurs and ancillary performances . . . off Broadway performances . . . and First class performances and developmental (i.e. workshop productions.)

Morse testified that based on 30 years of experience in the industry that in her view, the production contract covers only first-class productions, and furnished testimony as to her understanding of the difference between first-class and second-class productions. According to Morse some of the hallmarks of first-class productions and tours are first-class tours replicate Broadway productions as closely as possible, in areas such as productions values and the quality and size of the cast. These tours travel slower and heavier, and will generally play engagements of not less then a week, often from 2 to 8 weeks. First-class tours also play generally in "first-class cities," such as large metropolitan areas with an established theater and in a first-class theater that has larger seating capacity and that meet a certain technical standards. Second-class tours, on the other hand, are generally smaller and less expensive productions, that command smaller guarantees from the presenter, and will generally play in smaller cities, characterized by smaller engagements; i.e., split weeks which is a week where the production plays in more then one city, and "one nighter" which is a production that plays only one night in a particular city.

Respondent also introduced a number of exhibits into evidence, consisting on itineraries of tours produced by the Dodgers and by BLT. Morse furnished testimony concerning these tours, and why she viewed them as first- or second-class tours. The Dodgers tours of *Tommy*, *The King and I*, *Footloose*, and *42nd Street* were first-class tours, based on their directors, cast size, length of engagements, and cities visited. For example *42nd Street* played in cities such as Chicago, Philadelphia, Washington, D.C., Los Angeles, and San Francisco with engagements of from 2–8 weeks in those cities. *The King and I* played 40 performances in Washington, D.C., 24 performances in Boston, 32 in San Francisco, and 16 in Los Angeles, and 3 in Seattle. *Footloose* had 32 performances in Seattle, 21 in Detroit, 24 in Cleveland, 16 in Los Angeles, Chicago, and Ft. Lauderdale. *Tommy*, when produced by Respondent, had 53 performances in Boston, 40 in Washington, D.C., 23 in Detroit, 32 in San Francisco and Chicago, and 29 in Denver. Further, none of these Dodger tours played in single split week engagement.

Additionally all of the Dodger tours employed the same director and choreographer as employed by the Broadway production and had a cast size similar to the Broadway productions.

In contrast, Morse testified that in her opinion, the productions of these shows by BLT were second-class tours. Morse contended that the BLT tour of *42nd Street* was a second-class tour, because most of the cities played such as West Point, New York; Abilene, Kansas; Schenectady, Utica, and Elmira, New York; and Columbia, South Carolina are not first-class cities, and are not normally places where first-class tours play. Further Morse points out that most of the engagements are small in size, including several split weeks. For example for the week of September 28 through October 2, 2005, the BLT tour gave seven performances in five different cities, the week of October 3–4, 2005, it performed eight times in four different cities, and for the week of January 16–22, 2006. The BLT tour was scheduled to play six different cities in 6 days. Some other cities on BLT's tour, addition to the ones named by Morse, were Roanoke, Virginia, Sarasota, Florida, Lima, Ohio, and Saginaw, Michigan.[13]

On the other hand, the itinerary for the BLT tour of *42nd Street* also revealed that there were some longer engagements on the tour. They included eight performances in a single week at the Chrysler Hall in Norfolk, Virginia, the Carpenter Center in Richmond, Virginia; the Providence Performing Arts Center in Providence, Rhode Island; The McCallum Theatre in Palm Desert, California; the New Jersey Arts Center in Newark, New Jersey; Civic Center Music Hall in Oklahoma City, Oklahoma; and the Tulsa[14] Pac Theatre in Tulsa, Oklahoma.

Additionally, the BLT tour of *42nd Street* played or was scheduled to play for 3 weeks in Redondo Beach, California, 2 weeks in Dayton, Ohio, 1 week in Phoenix, Arizona; Thousand Oaks, California; Birmingham, Alabama; Spokane, Washington; Richmond, Virginia; San Bernardino, California; Toledo, Ohio; Anchorage, Alaska; and West Palm Beach, Florida.[15]

Morse also characterized the BLT tour of *The King and I*, as second-class, since it played "second-class" cities, such as Lubbock, Texas, Cupertino, California, Sherman, Texas, and Reno, Nevada, and it consisted of frequent short engagements. Morse specifically noted the week of September 1–6, 1998, where the BLT tour played in six cities on 6 consecutive nights.[16]

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[13] Additionally, the cast of Respondent's *42nd Street Street* tour was 51, as compared to 36 for the BLT of that show.

[14] I note that the Dodgers tours of the *The King and I*, and *Footloose* both played eight performances at the same Chapman Theatre in Tulsa, as did the BLT tour of *42nd Street.* Additionally, the Dodgers tour of *Footloose* had eight performances at the Providence Pac Theater, and its tour of *Tommy* gave eight performances at the McCallum Theater in Palm Desert, California.

[15] Notably, the Dodgers tours of Tommy and The King and I, both performed at the same Kravis Theatre, in West Palm Beach for the same number of performances, (8) as did the BLT tour of *42nd Street.*

[16] I note however that one of the cities included in that week was one night in Philadelphia, Pennsylvania, referred to by Morse in the other

The BLT itinerary also includes a number of cities, which were not included in the Dodgers tour of that show, such as Muncie and West Lafayette, Indiana, Sandusky, Ohio, and Flint, Michigan. The BLT tour also included several split weeks, in addition to the one referred to by Morse, including the week of February 2, 1999, where it played five cities in 6 days.

On the other hand, the BLT tour of *The King and I* also included several longer engagements, such as eight performances during 1 week periods at the Pace Theatrical Group venues[17] in Austin and San Antonio, Texas; Milwaukee, Wisconsin; and Long Beach, California; and at theatres in Rochester, New York; Providence, Rhode Island; Des Moines, Iowa; St. Louis, Missouri; Oklahoma City, Oklahoma; Detroit, Michigan; Buffalo, New York; New Orleans, Louisiana;[18] and Calgary, Canada. The BLT tour also had a 4-week engagement at the Zanadu Theatre, Taj Mahal in Atlantic City, New Jersey, and a 2-week tour at the Victoria Theatre in Dayton, Ohio, and 2-week engagement at the Shubert in New Haven, Connecticut.[19]

Morse also testified that she considered the BLT tours of *Tommy* and *Footloose* to be second-class tours, based on the cities played and the length of engagements. Morse specifically referred to the week of September 25 through October 1, 1995, of the BLT *Tommy* tour, which included 1 day in La Crosse, Wisconsin, and 5 days in Des Moines, Iowa.[20] Morse also referred to cities on the BLT itinerary of Kalamazoo, Michigan, Lincoln, Nebraska, and Fort Wayne, Indiana, as cities not normally booked with first-class tours. The BLT tours of both *Tommy* and *Footloose* contained a number of split weeks including several weeks where performances were given daily in a different city.[21] Morse testified further that no first-class tour could accomplish six cities in 6 days.

Although as related above, the BLT itineraries of Tommy and *Footloose,* both contained a number of short engagements (less than a week), both tours also contained a number of engagements of 1 week or more. BLT's *Footloose* tour, gave a full week of eight performances in Norfolk, Virginia; Oklahoma City, Oklahoma; Buffalo, New York; Richmond, Virginia; Fort Worth, Texas; Rochester, New York; Kansas City, Missouri; Spokane, Washington; and Anchorage Alaska, as well as 2 weeks in Dayton, Ohio, and a week and a half (12 performances in 9 days) in Wilmington, Delaware.[22]

BLT's tour of *Tommy*, demonstrates that it played 8 performances in a 1-week period at Pace Theatrical theatres in Miami and Orlando, Florida; New Orleans, Louisiana; and Milwaukee, Wisconsin. Morse conceded that these theatres were normally considered first-class venues.[23]

Further, BLT's *Tommy* tour also contained a number of 1 week, eight performance schedules, including Charlotte, North Carolina; Dayton, Ohio; Mexico City, Mexico; Grand Rapids, Michigan; Providence, Rhode Island; Omaha, Nebraska; Buffalo and Rochester, New York; Baltimore, Maryland; Raleigh, North Carolina,; Fresno, California; Portland Oregon; Salt Lake City, Utah; and Anchorage Alaska.[24]

Morse also testified that generally the Dodgers contract only for first-class rights to shows and that for shows such as *42nd Street, The King and I, Footloose,* and *A Funny Thing Happened on the Way to the Forum,* this was the case.[25] The record revealed and Morse conceded that the Dodgers initially obtained both first and second-class rights for *Tommy.* However, these secondary rights were subsequently conveyed to Music International (MTI), a licensing agency, who in turn licensed the second-class rights to BLT. Morse also admitted however, that the Dodgers also obtained second-class rights to shows such as *Dracula* and *Good Vibrations.* Since neither of these shows were successful, there were no first or second-class tours of either show.

According to Morse, she was always under the impression that the Dodgers run only first-class tours, and does not recall any discussion among Respondent's officials, concerning whether Respondent should or should not run a second-class tour. Morse also testified and the record confirms that Respondent's first-class tours of *Footloose, The King and I,* and *Tommy* were directed by the same director as the Broadway productions of these shows, while the BLT productions of these

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parts of their testimony as a "first-class" city. Indeed Philadelphia was also part of the itinerary for the Dodgers tour of *The King and I,* but for an engagement of eight performances. It is also noted that the Dodgers "first-class" tour of *Tommy* played eight performances in Cupertino, California, characterized by Morse as a second-class city.

[17] Morse conceded that Pace Theatricals generally utilize first-class venues.

[18] I note that the Dodgers tours of *Footloose* and *42nd Street,* performed at the same New Orleans Theater as the BLT tour of the *The King and I.* The Dodgers first-class tours of *42nd Street, Tommy and Footloose* all played in Detroit. The Dodgers tours of these shows also played in St. Louis, Missouri, and San Antonio, Texas, at the same theatres that housed the BLT tours of *The King and I. The Dodgers tours of 42nd Street,* and *Tommy* also performed in Austin, Texas. Its *42nd Street* tour played in Buffalo and Rochester, New York, and the Dodgers *Footloose* tour played in Providence, Rhode Island, and Des Moines, Iowa, at the same theatre that housed BLT's *The King and I* tour.

[19] The Dodgers tour of *Footloose* gave 16 performances at the same Shubert Theatre in New Haven that housed the BLT *The King and I* tour.

[20] As I have noted, above, however, the Dodgers tour of *Footloose* also played in Des Moines, giving eight performances at the same Civic Center venue as the BLT *Tommy* tour. Additionally, the Dodger *42nd Street* tour also played at the Civic Center in Des Moines.

[21] The BLT *Tommy* tour traveled to six cities in 7 days in October 1996. (Olympia, Bellingham, and Tacoma, Washington, Eugene, Oregon, Tacoma, Washington, and Klamath Falls, Oregon). The BLT *Footloose* tour visited five cities in 1 week, Tyler, Abilene, Orange, Galveston, and College Station, Texas, in November 2000.

[22] As I have noted above, the Dodger's *42nd Street* tour played in Rochester and Buffalo New York for 1 week and performances of that tour was housed at the Shea Theatre and the Auditorium Theatre, respectively, the same venues used by the BLT *Footloose* tour. Further the BLT *Footloose* tour also performed at the Kravis Center in West Palm Beach, Florida, where as detailed above the Dodger tours of *Tommy* and *The King and I* performed.

[23] As noted above the Dodgers tours of *42nd Street* and *Footloose* played in New Orleans for eight performances. Additionally, the Dodgers *Footloose* tour performed for a week in Milwaukee, and its *42nd Street* Tour played one week (8 performances) in Orlando, and in Miami.

[24] As I have detailed above, Respondent's tours of *42nd Street* and *Footloose* each played one week in Buffalo and Rochester, New York. The Dodgers tours of *42nd Street, The King and I,* and *Footloose,* all played one week engagements in Charlotte and Baltimore. Respondent's *Footloose* and *42nd Street* tours played a week in Grand Rapids, its *42nd Street* and *The King and I* tours performed in Portland and Salt Lake City, its *Footloose* tour played Providence, and the Dodgers *42nd Street* tour performed for a week in Raleigh and Omaha.

[25] That testimony is corroborated by the rights agreements for these shows which were introduced into the record.

shows were directed by someone else. The record also discloses that the cast size for Respondent's tours of *The King and I, Footloose,* and *Tommy,* was substantially higher than the BLT tours of these shows.[26]

Morse also testified that after the Dodgers produced *Music Man* on Broadway, it decided to that it was not economically feasible to produce any tour of that show and then returned the first-class rights to the widow of the author, Meredith Wilson. Subsequently, BLT obtained the rights to *Music Man* and produced a tour of that show.

The record does not disclose whether BLT obtained first-class, second-class or both rights from Wilson. However, Stamatiades testified that based on Broadway scuttlebutt, Michael David had encouraged the estate of Wilson to award second-class rights to BLT, when the Dodgers decided not to produce their own tour. She also testified that she had "heard" that BLT had obtained rights to produce *Tommy, Footloose,* and *42nd Street,* in the same fashion, i.e., Respondent "encouraged" the rights holders to give BLT the rights to produce these shows.

The BLT Itinerary for the *Music Man* was introduced into the record. Interestingly, Respondent did not ask Morse her opinion as to whether the BLT tour of *Music Man* was a first or second-class tour. However, on cross-examination, Morse conceded that nearly all the cities listed on BLT's *Music Man* tour were first-class cities. Stamatiades testified in this regard that all the cities on that itinerary with the exception of White Water, Wisconsin, are considered "first-class cities," and the most of the venues listed are theaters that have played first-class productions, produced under the production contract.

The evidence of the BLT *Music Man* itinerary in the record, consists of a one-page document which lists the tour from September 30, 2001, to October 18, 2002. It does not list the venues, but does indicate the cities and the dates of the tour. It shows 2-week engagements in Cleveland, Ohio, Denver, Colorado, and Ft. Lauderdale, Florida.[27] This portion of the BLT tour listed a total of 34 cities, with all of the engagements of at least a week. It also included an engagement of 16 performances over a period of slightly over 2 weeks in Cincinnati, Ohio.[28]

Other cities on this portion of the BLT itinerary included Philadelphia, Pennsylvania; Chicago, Illinois; Detroit, Michigan; Atlanta, Georgia; New Haven, Connecticut; Seattle, Washington, and other cities, where as related above Respondent has toured a number of its shows.

The itinerary then reflects a break in the tour, and a rehearsal for a period of 11 days in Fayetteville, Arkansas. Subsequent to that, the tour consisted of a few split weeks in smaller cities such as Ames, Iowa; Flint, Michigan; Jackson, Mississippi; Akron, Ohio; Madison, Wisconsin; Benton Harbor, Michigan; Danville, Kentucky; Youngston, Ohio; Sioux Falls, South Dakota; and Logan, Utah. However, this phase of the BLT tour also consisted of several longer engagements, such as 2 weeks in Boston, Massachusetts (16 performances), Dayton, Ohio (16 performances), and Wilmington, Delaware (12 performances).[29]

This phase of the BLT tour of *Music Man,* also included 1 week (eight performance) engagements in New Orleans, Louisiana; Oklahoma City and Tulsa, Oklahoma; Providence, Rhode Island, Rochester, New York; Houston, Texas; Salt Lake City, Utah; St. Louis, Missouri; and Nashville, Tennessee.[30]

Further, the itinerary included another rehearsal for a 2-week period, followed by stops of short duration, entirely of split weeks in smaller cities[31] plus several layoffs of from 1–5 weeks.

Stamatiades testified that in her view the *Music Man* tour of BLT can be characterized as a first-class tour, which commonly starts out in major cities with longer engagements, and then in later years will perform in smaller cities, with shorter engagements.

Evidence was also presented concerning the cast size of the *Music Man* tour. The Broadway production provided by Respondent had a cast of 42 performers. Respondent introduced into the record a copy of a program of BLT's *Music Man* tour, which was undated, and reflected 32 cast members. However, Charging Party introduced into evidence a playbill collected by Equity for an April 16, 2002 performance of BLT's *Music Man* tour, which consisted of 39 cast members.

Furthermore, as detailed above, Equity attempted to organize BLT's *Music Man* tour, and the decision on objections revealed that the number of eligible voters in the election held on June 11, 2002, was also 39, the number of employees on the *Excelsior* list submitted by BLT.

Charging Party introduced into evidence BLT's tour of *Miss Saigon,* which began on September 6, 2002, and lasted until February 1, 2004.[32] According to Stamatiades, the venues listed on this itinerary were all cities and theatres where first-class tours have played, and she considered this to be a first-class tour.[33]

The itinerary for this tour consisted entirely of engagements from 1 to 3 weeks (8–24 days) except for one four-performance engagement in West Point, New York, and a five-performance engagement in State College, Pennsylvania.

The cities listed included: Miami, Florida; Omaha, Nebraska; Baltimore, Maryland; Phoenix, Arizona; Lake City, Utah; Chicago, Illinois; Atlanta, Georgia; Boston, Massachusetts; Philadelphia, Pennsylvania; Tulsa, Oklahoma; Providence, Rhode Island; Palm Desert, California; and Charlotte, North Carolina.[34]

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[26] They were 46–35, 35–26, and 30–24, respectively.

[27] Respondent's tours of *42nd Street, The King and I, Footloose,* and *Tommy* all played in Cleveland. *(Footloose,* 4 weeks *42nd Street,* and *The King and I,* 2 weeks and *Tommy* 1 week, and Denver (*The King and I,* 4 weeks, *Tommy,* 3 weeks, *Footloose* and *42nd Street,* 2 weeks.)

The Dodger tours of *42nd Street, Tommy,* and *Footloose* performed in Ft. Lauderdale for 2 weeks each.

[28] Cincinnati, Ohio also played host to tours of the Dodgers shows of *Footloose, The King and I,* and *42nd Street* for 16 performances and of *Tommy* for 8.

[29] The BLT tour gave 16 performances at the Colonial Theatre in Boston. Respondent's tour of *Footloose* gave 16 performances at the same theatre. Its tour of *42nd Street* gave 8 performances at the Wang Theatre in Boston, where Respondent's *The King and I* tour gave 24 performances. The Dodgers tour of *Tommy* gave 53 performances at the Colonial Theatre in Boston, and then later on the tour performed 16 times at the Wang Theatre.

[30] As noted most if not all of these cities, were venues for one or more of the Dodgers tours described above.

[31] These cities included Amherst, Massachusetts, Johnstown, Pennsylvania., Athens, Ohio; Muncie, Indiana; Edmond, Oklahoma; Harlingen, Texas; Lima, Ohio; Rockford and Decatur, Illinois.

[32] The Dodgers had never produced a tour of *Miss Saigon.*

[33] Neither Morse nor any other witness from Respondent testified to the contrary.

[34] All of these cities, as detailed above have been venues for shows produced by Respondent. The BLT *Miss Saigon* tour also gave eight

Popper also testified on behalf of Respondent, and corroborated Morse's opinion, that the production contract covers only first-class productions. In support of that assertion, Respondent through Popper presented various letters between the parties on this subject.

On November, 21, 2000, Harriet Slaughter, Popper's predecessor as director of labor relations for the League sent a letter to Eisenberg. The letter which was attached to a list of League members, which included the names of David and Strong as officials of Respondent.

The letter reads as follows:

> November 21, 2000
> Mr. Allan Eisenberg
> Actor's Equity Association
> 165 West 46th Street
> New York, NY 10016
>
> Dear Alan:
>
> Attached is a list of (i) League members who may have a controlling ownership interest in a production company(ies), and where appropriate the name of such company(ies), that are included in the multi-employer bargaining unit bound by the Production Contract when producing "first-class performances (as that phrase is used in Dramatists (Guild APC:) of theatrical productions on Broadway and/or on tour that are not subject to any other collective bargaining agreement covering stage performers" ("League/Equity Shows"); and (ii) other companies included in the multi-employer unit when producing League/Equity shows. In those instances where a listed League member is not identified on the list as having a controlling ownership interest in a production company, production companies that the League member has a controlling ownership interest, in, and which produce League/Equity Shows, are or will be bound by the Production Contract. Nothing herein is included to expand or contract the scope of the existing multi-employer bargaining unit.
>
> Sincerely,
>
> Harriet Slaughter
>
> Director, Labor Relations

According to Popper, this letter was intended to capture the understanding between the parties, that the contract is intended to apply to first-class productions. This letter was sent after the terms of the production contract had been reached. Agreement had been reached on October 10, 2000, on terms of a new contract to run from 2000 to 2004. No such letter was sent to Equity prior to the negotiations, and in fact this letter was the first time that the League had sent such a letter to the Union.

Popper was not involved in the decision by the League to send such a letter to Equity, and did not know if an issue concerning this subject had come up during or prior to negotiations. Popper testified further, "I think it was just an intention to memorialize what the understanding of the industry was, which had not been done before." He further asserts that "From our prospective it clarified and described who was bound by the Production Contact."

Equity sent no response to this letter.

On March 7, 2001, Slaughter sent another letter to Eisenberg, reflecting an updated list of League members. Strong, David, and the Dodgers appeared on the attached updated list. This letter contained no reference to contract coverage or to first-class versus second-class coverage.

On January 23, 2002, Slaughter sent another letter to Equity, reading as follows:

> January 23, 2002
>
> Mr. Alan Eisenberg
> Actors' Equity Association
> 165 West 46th Street
> New York NY 10036
>
> Dear Alan:
>
> This is the updated list for League members as of January 23, 2002.
>
> This is a list of (i) League members who may have a controlling ownership interest in a production company(ies), and where appropriate the name of such company(ies), that are included in the multi-employer bargaining unit bound by the Production Contract when producing "first-class performances (as that phrase is used in the Dramatists Guild APC) of theatrical productions on Broadway and/or on tour that are not subject to any other collective bargaining agreement covering stage performers" ("League/Equity Shows"); and (ii) other companies included in the multi-employer unit when producing League/Equity shows. In those instances where a listed League member is not identified on the list as having a controlling ownership interest in a production company, production companies that the League member has a controlling ownership interest in, and which produce League/Equity Shows, are or will be bound by the Production Contract. Nothing herein is intended to expand or contract the scope of the existing multi-employer bargaining unit.
>
> Sincerely,
> Harriet Slaughter
> Director, Labor Relations

The list of members attached to this letter, did not include David, Strong, or the Dodgers, since Respondent had resigned from the League sometime in 2001. However, it is undisputed that the Dodgers were bound by the 2000–2004 contract at the time of the January 23, 2002 letter. No such letter was sent to Equity from the Dodgers concerning the issue of contract coverage.

Equity did not send a response to the League's January 23, 2002 letter.

On August 7, 2003, Popper sent a similar letter to Equity, containing an updated list of members as of June 30, 2003, and containing the same language of as in Slaughter's letters of 2000 and 2002, with respect to first-class productions. Neither the Dodgers, Strong, nor David were listed on the attached list of members to this letter. As noted, however, the parties have stipulated and agreed that David was a member of the League's negotiating committee, and the Dodgers are bound by the agreement reached between the League and Equity in 2004.

Popper conceded that Equity never agreed to the League's view of contract coverage as detailed in these three letters, but emphasizes that Equity did not dispute such an interpretation

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performances in Montreal and Vancouver, Canada, where the Dodgers *42nd Street* tour also performed. The tour also includes some smaller cities, such as Peoria, Illinois; Scranton, Pennsylvania; Kalamazoo, Michigan; and Schenectady, New York, which do not appear on the itineraries of any of Respondent's shows in evidence in this proceeding.

until a letter from Moss, the Union's attorney, and Popper, dated January 27, 2004.[35]

This letter reads as follows:

> January 27, 2004
>
> **BY FACSIMILE (212) 719-4389**
> **& FIRST CLASS MAIL**
>
> Seth M. Popper
> Director of Labor Relations
> League of American Theatres and Producers, Inc.
> 226 West 47th Street
> New York, New York 10036
>
> **Re: Production Contract**
>
> Dear Seth:
>
> As a follow-up to last Thursday's meeting, this is to confirm the following:
>
> 1. Equity requests a copy of the League's Constitution and By laws and any other document setting forth the League rules for establishing how a League member elects to participate in, or not to participate in, League negotiations with Equity.
>
> 2. Inasmuch as multi-employer bargaining is consensual, this is to place the League on notice that Equity reserves the right to refuse to permit particular League members to participate in the multi-employer unit and in particular, that Producers who seek to join the League multi-employer unit after negotiations have commenced will be permitted to do so only with Equity's prior consent.
>
> 3. Equity does not agree with the characterization of the scope of the existing multi-employer bargaining unit set forth in the cover letter to the updated lists of League members, except that we agree with the statement that nothing in the cover letter was intended to expand or contract the scope of the existing multi-employer bargaining unit. In particular, Equity believes that Producers included on your list are included in the multi-employer bargaining unit for all purposes to the extent described in the Production Contract; that the definitions in another Guild's contact are not controlling; and that bargaining unit Producers and the production companies they direct and control are necessarily bound by the Production Contract and cannot opt out of that Contract for a particular production without Equity's consent.
>
> We look forward to the commencement of negotiations on April 1, and appreciate the League's willingness to schedule sufficient days for negotiations in order to ensure that negotiations will be able to conclude in a timely manner.
>
> Very truly yours,
> Franklin K. Moss
> KM:gm
>
> CC: Bernard Plum, Esq.
> Alan Eisenberg
> Ken Greenwood
> Flora Stamatiades
> Walt Kiskaddon

No response was sent by the League to this letter, and as noted bargaining for the 2004–2008 contract took place from between April1 2004 to July 12, 2004, when agreement was reached on a new agreement running from June 28, 2004, to June 29, 2008.

Neither during these negotiations, nor as far as the record discloses, at any prior negotiations did the League make any proposal to change the recognition clause, or any other provision of the contract, to reflect what the League believed to be the description of the unit as contained in its prior letters.

According to Popper, at one bargaining meeting, the date of which he did not recall, Eisenberg stated that he did not understand the League's cover letters, and needed further explanation. Popper did not testify what response, if any was made by League representatives to Eisenberg's inquiry. In any event, Popper conceded that at no time during any negotiations did any Equity representative ever state that it agreed with the League's position as stated in the prior letters that the contract applied only to first-class productions. Popper also did not recall any discussion during the negotiations of the issue of first-class versus second-class tours, and whether the contract covered one or the other or both. He did recall that during negotiations, there was extensive discussion of the economics of touring, and that during these sessions Eisenberg stated "that there was a certain level of touring that Equity was not desirous of representing." Popper contends that Eisenberg said, without defining what he meant, that there is certain level of touring that the Union has never been involved in and don't desire to be involved in. Popper added that he believed that Eisenberg's comment was "to convey a desire not to have salaries be too low for actors."

Stamatiades, on rebuttal, furnished testimony on this subject. She asserts that what Eisenberg said was that Equity was not interested in negotiating on behalf of the very small, one nighter tours, what Eisenberg called "itty, bitty tours." She further defined the issue, when asked whether any of the productions which had been discussed previously during the trial would qualify as "itty bitty." Stamatiades responded as follows:

> Some of the—think some of the other tours we looked at. Maybe the "Tommy" tour. The non Equity "Tommy" tour might. Without looking at them__you know, the very late part of the "*Music Man*" tour maybe went in to play more than two cities a week. I mean basically that was the—the understanding of it was that split week is really two cities a week. Smaller than that, more than two cities a week was not what we were trying to cover with the production contract negotiations.

Popper also testified, similar to the testimony of Stamatiades and Morse that Equity did assert during the negotiations that it was concerned about an alleged "diversion" of work from League members to non-Equity tour companies, such as BLT, and that the Union presented a proposal in response to this perceived problem. Popper further testified that this proposal received little discussion and that most of the negotiations were concerned with the issue of how to make tours economically feasible for League members and to satisfy the union's concerns about loss of work.[36] Eventually, the parties reached an agreement on a clause entitled "Experimental Touring Program." This program consists of eight pages detailing certain

[35] Note that this letter was sent after the Union filed the instant charge earlier in January.

[36] Stamatiades did not dispute Popper's testimony in this regard.

conditions wherein musical tours can qualify to pay lower wages and per diem and other changes in benefits, than is required in the production contract.

Popper also provided testimony, corroborating Morse, that League members generally acquire only first-class rights to productions, although he adds that at times League members will acquire second-class rights, not to produce shows under such rights, but to put a "hold" on such rights, so that someone else does not acquire such rights while a League member still has the first-class rights to a particular production.

Popper also testified in support of Morse's definition of first-class versus second-class rights, by asserting that "it's a little like the definition of pornography. You know it when you see it." He then went on to testify similarly to Morse, that first-class tours are characterized by experienced actors, directors and choreographers, with significant capitalization, at first-class venues with engagements of 1 week or more.

Popper also testified concerning rule 71(b) of the contract, known as the split week provision. According to Popper, this clause came into being in the 1980's and was part of an effort by the parties to capture work that had not been part of the contract before. The clause is a provision that defines a split-week tour as based on a formula involving the number of weeks of the tour of 1 week or less of engagements of 4 weeks or more, and Actor's compensation of $10,000 per week or less. If a tour qualifies for split week contract treatment, the Union agreed to a number of concessions vis á vis the production contract in various areas, such as salary, rehearsal, per diem overtime, health, days off and layoffs. Popper testified however that this clause has not been used that often, and in fact he could not remember a show that used it since he had been at the League.[37]

Charging Party points out that based on the itinerary of BLT's *Tommy* tour, it would have barely satisfied the special concessions of the Production Contract. (i.e., 51 percent of the weeks of BLT's *Tommy* tour are engagements of less than a week)

In this regard, Morse testified that although split-weeks are one of these "hallmarks" of second-class tours, all split week tours are not necessarily second-class tours. Thus, Morse explained that once tours are constructed in a manner that permits split-weeks in multiple cities within a week, and the economics are established, the quality of production, caliber of talent, and number of the cast will determine whether it is considered to be a first or second-class production.

Stamatiades also provided testimony that the production contract has been applied to various off-Broadway Productions, which are not deemed be first-class. Further, she testified that Ken Gentry produced a tour of the show *Jekyll and Hyde* under the production contract even though he had only second-class rights to that show. However, Stamatiades conceded that Ken Gentry is not a member of the League, and that he agreed with Equity to tour the show of *Jekyll and Hyde*, under the production contract. She further admitted that Gentry produced tours of *Oliver*, and *Oklahoma* without signing a production contract with Equity, and as non-Equity productions.

Finally, the Charging Party introduced into the record a copy of an agreement signed by the producers of *Jersey Boys*, a Dodgers' production, and Equity, dated July 9, 2005. This agreement entitled, "Independent Producer's Agreement for Productions Contract," states that the producer recognizes Equity as the representative of all actors (Principal and Chorus), including understudies, stage managers, and assistant stage managers employed by producers in all of producer's productions wherever they may take place. Further under the agreement the producer agrees to be bound by the production agreement, with certain modifications, as specified in the independent agreement.

[37] Popper has been employed by the League since December 1998.

III. ANALYSIS

A. The Settlement Agreement and the Motion in Limine

Respondent, in its answer argued that the Union by signing the settlement agreement with Respondent dated March 29, 2002, waived its right to the information requested from Respondent. Respondent has not made any reference to this contention in its brief, and appears to have abandoned that assertion, in light of the Union's agreement to limit its information request to information subsequent to March 29, 2002.

However, since Respondent did not formally withdraw the contention raised in its answer, I shall briefly consider it. The settlement covers, as described above, claims and causes of action that arose prior to its execution date of March 29, 2002. Therefore, since the complaint has been amended and the Union has modified its information request, to reflect that no information is sought for the period prior to March 29, 2002, Respondent's affirmative defense has no merit and must be dismissed.

Respondent filed prior to the trial, a motion in Limine, to preclude the introduction of certain evidence at the trial. Respondent contended that based on the above settlement agreement, General Counsel and the Union, should be precluded from introducing any evidence that preceded March 29, 2002, particularly evidence bearing on whether Equity had a reasonable belief of an alter ego relationship between Respondent and BLT that arose prior to that date.

The motion was argued on the first day of trial. I denied the motion at that time. Respondent has renewed its request in its brief, and requested that I reconsider my ruling on that subject. Respondent argues in its brief, as it did in its motion, and in its argument at trial, that the agreement "reasonably construed," prohibits the introduction of such evidence. It points to the broad language in the settlement, by which the Union agreed to release Respondent from any claims or grievances arising before March 29, 2002, "In any way relating to any alleged relationship with, connection between, or interaction among" the Dodgers and BLT, "pertaining to the business or operations of BLT," and not to "make, file or join in, or assist or encourage others in making or filing any grievances claims, lawsuits, complaints or other proceedings" before the National Labor Relations Board concerning the relationship between Respondent and BLT.

Respondent further contends that this language precludes Equity and the General Counsel from relying on evidence predating March 29, 2002, in support of their burden to establish relevance of the information request made in 2003. It asserts that allowing such evidence would nullify the provisions of the agreement, and would deny Respondent the full benefit of its agreement, and be an "unreasonable and unfair result."

However, as I indicated in my initial ruling, the General Counsel was not a party to the settlement, and is not bound by said agreement. More importantly, the settlement agreement says nothing about evidence, and refers only to claims or griev-

ances, arising prior to March 29, 2002. The current charge was filed in 2004, and is based on a new information request made by Equity in 2003, well after this agreement was signed.

It is clear that General Counsel may introduce evidence of pre-settlement conduct, to shed light on the legality of conduct, which has occurred after the settlement agreement was executed. *Monongahela Tower Co.*, 324 NLRB 214, 215 (1997); *Kaumagraph Corp.*, 316 NLRB 793, 794 (1995); *Special Mine Services*, 308 NLRB 711, 720–721 (1992), enfd. in pertinent part 11 F.3d 88 (7th Cir. 1993).

Here, as in the above precedent, General Counsel is not seeking a finding that Respondent violated the Act prior to March 29, 2002, but is offering the evidence to shed light on the lawfulness of Respondent's denial of the Union's information request made in November 2003. Thus it is permissible to consider such pre-settlement evidence to evaluate the Union's alleged reasonable belief concerning the relationship between BLT and Respondent when it made its request in 2003.

I therefore reaffirm my ruling made at trial, that Respondent's motion in Limine is denied.

B. Section 10(b)

Pursuant to Section 10(b) of the Act, a violation of the NLRA cannot be found, "which is inescapably grounded in events predating the limitations period." *Machinists Local 1424 v. NLRB*, 362 U.S. 411, 422 (1960). However, events outside the 10(b) period can be used to shed light on critical events within the 10(b) period. Id. at 416. The crucial distinction between these principles is that the Board may not give "independent and controlling weight" to the pre-10(b) evidence. Id. at 417; *Monongahela Power Co.*, supra.

Respondent argues that since here most of the evidence establishing the Union's alleged "reasonable belief" concerning the relationship between Respondent and BLT, occurred outside the 10(b) period, that relying on such evidence would "give independent and controlling weight" to events occurring more than 6 months prior to service of the charge, and therefore the complaint must be dismissed. *Southern California Gas Co.*, 342 NLRB 613, 614–616 (2004). I do not agree.

I find *Southern California Gas*, supra, to be distinguishable in several important respects, and that Respondent's position is contrary to well-established Board precedent, supported by the Courts. Such precedent establishes that in information cases, the crucial dates for measuring Section 10(b) is the date of the requests for the information and the dates of the denial. The fact that some or even all of the evidence supporting the request took place outside 10(b) period is not conclusive, since the pre-10(b) evidence merely sheds light on the violation which took place within the 10(b) period. *Union Builders, Inc.*, 316 NLRB 406, 411 (1995), enfd. 68 F.3d 520 (1st Cir. 1995); (All evidence supporting information request outside 10(b) period); *Crowley Marine Service*, 329 NLRB 1054, 1059 (1999), enfd. 234 F.3d 1295 (D.C. Cir 2000); *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988) (Arbitrator issued a decision September 26, 1986 finding Employer related entity with another company to which it illegally diverted work. On February 28, 1987, Employer allegedly discontinued part of its business, and union believed, based primarily on arbitrator's award that Employer was again diverting work and violating contract. Union made information request on February 23, 1987, which was not denied until May 28. Based primarily on pre-10(b) arbitrator's award Board found that Union had a reasonable belief that Employer was violating contract, within 10(b) period, justifying request.)

Moreover, there are a number of Board cases, where the 10(b) issue is discussed in terms of when the Respondent has "clearly and unequivocally" denied a union's request. *Quality Building Contractors*, 342 NLRB 429, 431–432 (2004); *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1188 (1997), enfd. 157 F.3d 222, 228 (3d Cir. 1998); *Oliver Insulating Co.*, 309 NLRB 725, 726 (1992); *California Nurses Assn.*, 326 NLRB 1362, 1367 fn. 10 (1998).

Thus, in these cases all or most of the evidence supporting relevance of the requests occurred outside the 10(b) period, and the Board without even discussing or considering the issue of whether such evidence is time barred, found no 10(b) violations, based on the fact that the refusal to supply the information occurred within the 10(b) period. *Quality Building*, supra (Union learned of alleged contract violation, which supported its information request in October 2002.) The union did not make its request for information until April 2004, and it was denied on June 2004 by the employer. The 10(b) period begins to run from June, date of denial, not from October 2002 when the union learned of possible contract violations as contended by employer); *Public Service Gas*, supra (Union relied on evidence gathered for period of 2 years to support its information request made on May 18, 1993. Employer responded on June 4, 1993, but did not clearly deny request, until a letter in September 1993. Charge filed on March 4, 1994, was not barred by 10(b), since no unequivocal denial until September 1993.) Therefore, these cases also make clear, that evidence supporting the information request is not barred by Section 10(b), as long as the denial of the request is within the 10(b) period.[38]

Additionally, 10(b) cases dealing with other sections of the Act also support the conclusion that the pre-10(b) evidence here supporting the violation can be considered. *Sheet Metal Workers Local 80 (Limbach Co.)*, 305 NLRB 312, 315 (1991), enfd. 989 F.2d 515, 519 (D.C. Cir. 1993) (In an 8(b)(4) case, most of the evidence establishing motivation of union's action occurred outside 10(b) period. The Board, with court approval, relied on such evidence to shed light on Union's actions within 10(b) period); *Grimmway Farms*, 314 NLRB 73, 74 (1994) (Employees engaged in protected concerted activity by walkout in May 1990.) Employees were terminated at that time. In 1991, employees requested rehire and Employer denied request based on their conduct in walking out in 1990. Administrative law judge dismissed refusal to hire on 10(b) grounds finding the 1999 events were essential "missing proof," necessary to find a violation. Board reverses, finding that statement by Employer in 1999 referring to prior walkout is sufficient to permit consideration of the pre-10(b) evidence to shed light on Employer's motivation for refusal to hire within 10(b) period); *Outdoor Venture Corp.*, 327 NLRB 706, 709–710 (1999) (Board considers pre-10(b) evidence concerning issue of whether strike was an unfair labor practice strike, since only allegations General Counsel seeks to remedy is refusal to reinstate returning strikers within 10(b) period.) *Jennie-o-Foods*, 301 NLRB 305, 314 (1991) (ALJ and Board considers pre-10(b) evidence of unlawful promulgation of no-talking, no-socializing rule, in evaluating allegation of enforcement of rule within 10(b) period.)

A close examination of the facts in *Southern California Gas*,

[38] Here there is no dispute that the denial and the request for information in 2003, were within the 10(b) period.

reveals that it is not dispositive and clearly distinguishable from the instant case.

There, the union had made an information request in February 2001, for information based on a possible grievance concerning safety matters. The Employer rejected that request 4 months later. In February 2002, the Union made another information request, asking for similar information, but this time stating the reason for the request, that it had filed a safety complaint with the California Public Utilities Commission (CPUC).

The Board, with Member Walsh dissenting, found that the Union had not established relevancy for its 2002 request. It concluded that the information request referred only to its complaint to CPUC, a state agency, a matter outside the collective bargaining context. The General Counsel and the dissent argued that since the earlier request made reference to a threat to file with CPUC, that the instant request was relevant to an investigation of the grievance. The Board majority disagreed, emphasizing that the Union's 2002 request made no reference to a possible grievance, and that the Employer could reasonably believe that the information was being requested for the purpose of seeking discovery before CPUC.

Thus, the primary grounds for the Board's dismissal was that even considering the prior information request, the evidence was insufficient to establish that the current request was relevant to any grievance or other collective-bargaining function of the Union.

Alternatively, and in what can only be described as dicta, the Board then considered the 10(b) issue. It concluded that since there is nothing in the 2002 requests that refers to the 2001 requests the 2002 request "must be evaluated on its own terms, and, for the reasons stated above, the relevancy has not been shown." The Board observed that in these circumstances, reliance on the 2001 request to establish relevancy, "would be to give independent and controlling weight to events occurring more than 6 months to the service of the charge."

Furthermore, the Board relied on two additional reasons to dismiss the complaint. They were that the Union was pursuing its claim before a third party and not for the purposes of collective bargaining, citing, *WXON-TV*, 289 NLRB 615 (1988), enfd. 876 F.2d 105 (6th Cir. 1989), and that finally even assuming that the information was presumptively relevant, the presumption has been rebutted. The Respondent has affirmatively shown that the information was not relevant to any grievance or bargaining purpose.

It is clear that the issue in *Southern California Gas* was not the same as the present case. There the Union could not show that its information request in 2002 was relevant to any collective-bargaining purpose, but instead its request was based on a complaint to an outside agency, which the Board viewed as outside the Union's role as collective-bargaining representative. Here, there is no question that both the current and the Union's prior requests were based on the same issues (possible grievances and negotiations), which are clearly related to the Union's functions as collective-bargaining representative. Therefore, by relying in part on pre-10(b) evidence, which bear upon the Union's reasonable belief in support of the timely request is not giving "independent and controlling weight" to such evidence, but merely shedding light on the reasons for its request and the lawfulness of Respondent's refusal to comply. *Union Builders*, supra; *Limbach Co.*, supra.

More importantly, unlike *Southern California Gas*, here the record reveals some evidence within the 10(b) period, supporting the Union's reasonable belief. While much of the evidence is outside the 10(b) period, such as reports from employees concerning prior productions, information obtained concerning names, address and officers of the two companies, and a backstage article in May 2003, within the 10(b) period, the Union received reports from employees concerning BLT's *42nd Street* production, and obtained a resume from a producer-director which asserted a relationship between BLT and the Dodgers.

While Respondent dismisses this post-10(b) evidence as unreliable and hearsay, this contention has no bearing on the 10(b) issue. The record here contains evidence within the 10(b) period, which could support the Union's reasonable belief, and therefore dismissal based on 10(b) is not appropriate.[39] Further, as I have detailed above, the portion of the decision in *Southern California Gas* is only dicta, and was one of only four reasons cited by the Board in dismissing the complaint. Finally, as I have also noted above, the conclusion reached by the Board on the 10(b) issue, is in my view, contrary to the Board and Court precedent that I have cited and detailed, particularly *Union Builders*, supra*; Crowley Marine*, supra*;* and *Knappton Maritime*, supra, which were neither cited, distinguished nor overruled by the Board in its discussion therein.

Accordingly, based on the foregoing, I shall reject Respondent's contention that the complaint should be dismissed based on Section 10(b) of the Act.

C. The Union's Information Request

The general principles regarding the obligation of an employer to supply information to the union are clear and not in dispute. An employer, on request must provide a union with information that is relevant to its carrying out its statutory duties and responsibilities in representing employees. *Pulaski Construction Co.*, 345 NLRB No. 66, ALJD slip op. at 5 (2005); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The duty to provide information includes information relevant to contract administration and negotiations. *CEC, Inc.*, 337 NLRB 516, 518 (2002); *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987).

Where, as here, the information sought concerns matters outside the bargaining unit, such as those related to single employer or alter ego status, a union bears the burden of establishing the relevance of the requested information. *Reiss Viking*, 312 NLRB 622, 625 (1993); *Pulaski Construction*, supra. A Union has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. *Cannelton Industries*, 339 NLRB 996, 997 (2003); *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).[40]

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[39] Indeed, as I discuss in more detail below, Respondent is not correct in its assertion that hearsay or allegedly unreliable evidence cannot be considered as evidence supporting the Union's reasonable belief of a relationship between BLT and the Dodgers.

[40] I note that a number of Board cases, phrase the burden on union's in such cases as needing only to establish a "reasonable belief" that the information is relevant, without adding the requirement that it must also be based on objective factors. *Oklahoma Fixture Co.*, 333 NLRB 804, 811 (2001); *Public Service Gas*, supra, 323 NLRB at 1186 and 157 F.3d at 229; *AAA Fire Sprinkler*, 322 NLRB 69, 89–90 (1996); *Westmoreland Coal*, 304 NLRB 528 (1991); *Barnard Engineering*, supra at 600; *Joseph Stern & Sons*, 297 NLRB 1 (1989).

However, an examination of the facts in these cases reveals the existence of such objective facts, in order to establish the Union's "reasonable belief." In my view, the added requirement of objective facts to

In determining the relevance of requested information, the Board uses a broad, discovery type standard, wherein the Union's burden is not an exceptionally heavy one, requiring only a showing of probability that the desired information is relevant, and that it would be of use to the Union in carrying out its statutory duties and responsibilities, *SBC Midwest*, 346 NLRB No. 8 slip op. at 3 (2005); *Shoppers Warehouse*, supra. In this regard, the Board does not pass on the merits of the Union's claim of breach of the collective-bargaining agreement, in determining whether information relating to the processing of a grievance is relevant. *Pulaski Construction*, supra*; Shoppers Warehouse*, supra.

In applying these principles to the instant case, the crucial issue to be determined is what kind of evidence is appropriate to meet the Union's burden of establishing "objective facts" supporting its reasonable belief that its information request is relevant. More specifically the Union must show the existence of objective facts to support its "reasonable belief" of a single employer and ego relationship between Respondent and BLT.

In this regard, evidence was presented establishing a number of alleged "objective facts." They include reports from members to the Union both prior to its 2001 information request and in 2003, by performers on Respondent's tours, to the effect that BLT and the Dodgers are "one company," and why can't we stop Big League because "we see the relationship between Big League and the Dodgers." Further, the members on Respondent's *42nd Street* tour informed the Union that BLT representatives were at various tour sites of Respondent, inspecting sets, and costumes and discussing a non-Equity tour of the show. The Union also became aware that BLT used the same artwork as the Dodgers for various shows such as *The King and I* and *42nd Street.*

Additionally, prior to 2001, Stamatiades began to notice that a number of shows produced by the Dodgers either on Broadway, on tour or both, would then result in another non-Equity tour produced by BLT.

Upon further investigation the Union obtained documents from the New York. Secretary of State and the Internet, which showed that Elaine Warner, the wife of Sherman Warner, a principal of the Dodgers, was listed as chairman CEO of BLT. Stamatiades, who was familiar with most individuals actively engaged in the industry, had never heard or known Elaine Warner to be active in the industry. The Union was informed that Jonathan David the son of Michael David, another principal of the Dodgers, was a corporate officer of BLT, which was subsequently corroborated by a search from a commercial service, which listed Jonathan David as "Chairman" of BLT.

Stamatiades was also informed that the Dodgers and BLT shared offices at one time.[41]

Stamatiades was also informed that representatives of the Dodgers had "encouraged" the estate of Meredith Wilson to award second-class touring rights to BLT for *Music Man*, and that the Dodgers had also encouraged such an award of rights of *Tommy* and *Footloose* to BLT.

In May 2003, while preparing for negotiations, Equity notices an article in *Backstage*, a trade publication, which stated that BLT is a subsidiary of the Dodgers.

Stamatiades also was aware that BLT and the Dodgers were represented by the same attorney, and testified that she believed that there was a relationship between the two companies, because the names of both companies consist of baseball references.

Finally, Equity procured a document in February of 2004, appearing to be a resume of Curt Wollan, a director-producer, which reflect that he produced tours of shows with "Big League Theatricals and Dodger Productions of New York."

While General Counsel and Charging Party argue that the above evidence is more than sufficient to meet the Union's burden of establishing a "reasonable belief" based on objective facts, Respondent not surprisingly disagrees. Respondent's principal argument in this regard, is that the Union's burden may not be met by "hearsay" evidence, and that most if not all of the facts relied upon by the Union consists of such evidence. However, Respondent's contention is simply incorrect, as it is well settled by Board precedent, supported by the Courts, that a Union's "reasonable belief" may be established by "hearsay evidence." *Contract Flooring Systems*, 344 NLRB No. 117, ALJD slip op. at 4. (2005); *CEC, Inc.*, supra at 518; *Cannelton Industries*, 339 NLRB 996, 1005 (2003); *Walt Disney World*, 329 NLRB 904, 907 (1999); *Crowley Marine Services*, supra*; Public Service Gas*, supra at 1187; *Shoppers Warehouse*, supra at 259; *Reiss Viking*, supra at 625; *Magnet Cole, Inc.*, 307 NLRB 944 fn. 3 (1992); *Herbert Industrial Insulation Co.*, 312 NLRB 602, 608 (1993); *George Koch & Sons*, 295 NLRB 695, 699 (1989), enfd. 950 F.2d 1324 (7th Cir. 1991); *Walter N. Yoder & Sons, Inc.*, 270 NLRB 652, 656 fn. 6 (1984), enfd. 754 F.2d, 531, 534 (9th Cir. 1985); *Leonard Herbert, Jr.*, 259 NLRB 881, 885 (1981), enfd. 696 F.2d 1120 (5th Cir. 1983); *Heck Elevator Maintenance*, 197 NLRB 96, 98 (1982), enfd. 471 F.2d 547 (2d Cir. 1973).

Indeed several cases go further by observing that it is not necessary that the Union's information be shown to be accurate, non hearsay or even ultimately reliable. *Public Service Gas*, supra, 323 NLRB at 1182; *Electrical Energy Services, Inc.*, 288 NLRB 925, 931–932 (1988); *W.L. Molding Co.*, 272 NLRB 1239, 1240 (1984); *Boyers Construction Co.*, 267 NLRB 227, 229 (1983).

Moreover, from a definitional standpoint, the evidence characterized by Respondent here is not technically hearsay evidence at all, since it is not being offered for the truth of the reports, but merely to show that the Union had some basis for its request. *Reiss Viking*, supra at 625; *Hebert Industrial*, supra at 620; *George Koch*, supra at 699; *Walter Yoder*, supra, 270 NLRB 657 fn. 6, and 754 F.2d at 534.

The cases cited by Respondent in support of its assertion that "hearsay" evidence cannot be used to establish the Union's "reasonable belief" are inapposite. *Midland Hilton & Towers*, 324 NLRB 1141 fn. l (1997); *Times Herald Printing;* 315 NLRB 700, 709 (1994); *Auto Workers 651 (General Motor Motors)*, 331 NLRB 479, 481 (2000), are cases dealing with issues of the admissibility and reliance on hearsay evidence, where the evidence is being offered for the truth of the assertion made, such as proof of animus or motivation. That is unlike the case here, where as I have observed, and the cases consistently confirm, the evidence is not being offered for the truth of the allegations, but only in connection with the Union's reasonable belief, based on the information that it received.

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establish "reasonable belief," is meant to make clear that the Union's belief cannot be construed as "reasonable," where it is not based on objective facts, but rather, suspicion, surmise conjecture or speculation, *Bohemia Inc.*, 272 NLRB 1128, 1129 (1984); *Anchor Motor Freight*, 296 NLRB 944, 949 (1989).

[41] The fact was confirmed by Respondent's witness Sally Morse.

Accordingly, based on the precedent cited above, contrary to Respondent I do rely on the various items of information supplied to the Union, including alleged "hearsay" reports, in assessing whether the Union has met its burden of establishing a "reasonable belief" of an alter ego or other relationship between Respondent and BLT.

An examination of Board and Court law, convinces me that the Union has more than met its burden in this regard. Indeed, a substantial number of cases have relied on similar types of evidence, in whole or in part to support a union's "reasonable belief," sufficient to trigger an information request for nonunit information. *Cannelton Industries,* supra, 339 NLRB at 1005 (Union relied on reports from employees and companies shared same address); *CEC, Inc.,* supra, 337 NLRB at 517, 518 (Union relied on reports from its representatives in other cities, and the companies shared offices and were in the same industry); *Oklahoma Fixtures,* supra at 811 (Similar names of Employers.) *E. J. Alrich Electrical Contractors,* 325 NLRB 1036 fn. 2 (1998) (Union relied on statement from employee that the two companies involved "are the same company." Employee also told union that companies were in the same building and had same receptionist. Also relied on fact that son was president of one company, and father was president of other company alleged to be alter ego.); *National Broadcast Co.,* 318 NLRB 1166, 1168–1169 (1995) (Union relied on article published, as well as reports from employees); *Herbert Industrial,* supra, 312 NLRB at 608 (Union relied on reports from employees, and competitors of employer), *Reiss Viking,* supra, 312 NLRB at 626 (Reports from unit employees of alleged subcontracting); *Magnet Coal,* supra, 307 NLRB at 448 (Reports from employees that companies shared equipment and had same mailing address); *Briscoe Sheet Metal Co.,* 307 NLRB 361, 367 (1992) (Union relied on fact that wife of owner of one company was coowner of other company, as well as reports from unit employees that bargaining work was performed by nonunit employees); *D.J. Electrical, Inc.,* 303 NLRB 870 (1991) (Union informed by employees of company that president informed them that he had another company doing electrical work); *George Koch & Sons,* supra; and 950 F.2d at 1333 at 644 (Union received reports from employees about unit work. Also Union relied on fact that that where one company did not perform work of erection of product, the other alleged alter ego company did work); *Maben Energy Co.,* 295 NLRB 147, 153 (1989) (Union relied in part on newspaper articles, plus fact that labor relations of both companies were handled by same individual); *Bently-Jost Electrical Co.,* 283 NLRB 564, 568 (1987) (Union relies on shared offices plus the fact that son of official of one company is associated with other company); *Pence Construction Co.,* 281 NLRB 322, 323, 325 (1986) (Union relied on statements of Carpenters concerning relationship between companies, and the fact that companies shared same address); *Carson L. Gruman Co.,* 278 NLRB 327, 335 (1986) (Complaints from unit employees that company was transferring work and same attorney represented both companies); *W. L. Molding Co.,* 272 NLRB 1239, 1241 (1984) (Reports from employees as to alleged contract violations); *Walter Yoder,* supra, 270 NLRB 652 fn. 1, 655; 754 F.2d. at 536 (1984) (Union relied in part on reports from employees that one employer operating the other and was "the same company"); *National Cleaning Co.,* 265 NLRB 1352, 1353 (1982), enfd. 723 F.2d 746, 747 (9th Cir. 1984) (Complaints from unit employees that they were not receiving contract wages); *Leland Stanford Junior University,* 262 NLRB 136, 154 (1982), enfd. 715 F.2d 473, 474 (1983); *Heck Elevator Maintenance Co.,* 197 NLRB 96, 98 (1972), enfd. 471 F.2d 647 (2d Cir 1973) (Reports from members, plus shared office space.)

Respondent offered some evidence in an attempt to discredit the Union's alleged "reasonable belief," such as the fact that newspapers such as the New York Times frequently often mistakes in their reporting on theatre issues. Such evidence is unpersuasive. Although it may be true as testified to by Morse, that newspapers do at times make errors in their reports on the theatre industry, it is also true, and is not disputed by Morse, that at other times such reporting is accurate. Here the reporting was done by "Backstage," a periodical specializing in the theater industry. One would expect that such a periodical would be more likely to report accurately on the industry, than a regular paper, even the New York Times. More importantly, the issue here is not whether the article is or is not accurate, but whether the Union acted reasonably in relying on the article. I find that it was certainly reasonable for the Union to rely on the article by a well respected industry periodical which stated that "BLT is a subsidiary of the Dodgers." I note in this regard, that the article contained direct quotes from Dan Sher, a principal of BLT, in discussing the rise of non-Equity tours. I find that it was reasonable for Equity to conclude therefore that the articles' statement concerning the relationship between BLT and Respondent was based on information from Sher, and thus more likely to be accurate.

Much of the other evidence offered by Respondent, such as that it is common in the industry for unrelated activities to share offices, that Morse never heard of Wollan (the producer-director whose resume the Union relied on), and Morse's opinion that the name of BLT was a reference to "League" of theatres and not baseball, as believed by Stamatiades, is also not persuasive. That evidence may be relevant to issues of whether BLT and Respondent are alter egos, but not to the Union's "reasonable belief" as to that question. It is not necessary for General Counsel or Charging Party to show or for me to find, which I do not, that there is an alter ego relationship between BLT and the Dodgers. *Cannelton Industries,* supra at 1004; *Bentley-Jost,* supra at 563; *Pence Construction,* supra at 324. The relevant issue is whether the Union has shown that it had a "reasonable belief," based objective facts that there is an alter ego or other relationship between BLT and the Dodgers.

Based of the above precedent, which frequently have found "reasonable belief," based on far fewer "objective facts," than are present here, I conclude, in agreement with General Counsel and Charging Party, that the Union has more than met its burden of proof in this regard.

That finding does not end the inquiry, since the Union must also show that, even assuming a finding of alter ego or some other relationship between the companies, that such information is relevant to the Union's function as a collective-bargaining representative of the unit employees. There can be little doubt that the evidence has established such connection, based on Stamatiades' testimony, plus an examination of the contract and the Union's negotiation proposal. This evidence establishes that the Union based on its "reasonable belief" that there is a relationship between BLT and Respondent, believes that the contract may have been violated by work being performed by BLT that should have been covered by the agreement. More specifically, the Union relied on rule 8 of the production contract, which provides that contracts of employment

are binding on all corporations as enterprises which "each signed directs controls or is interested in." Further, the Union was aware that BLT was about to and in fact subsequently did, produce a non-Equity tour of *42nd Street* which Equity believes should be covered by the contract. Therefore, in order to determine whether it should file a grievance over this or any other tour (run by BLT), it needs the information it sought about the relationship between BLT and the Dodgers.

Stamatiades also testified that the Union needed the information for negotiations. In that regard, the record establishes that Equity did raise the issue in the negotiations for a new agreement beginning in April 2004, that it felt that work was being diverted by League members to non-Equity companies, and specifically referred to the Dodgers and BLT, as well as other companies and other non-Equity tour companies. The Union also asserted that there was a relationship between BLT and the Dodgers, as well as between the other league members and other non-Equity touring companies. In order to address these concerns, the Union submitted two proposals, entitled "Preservation of Work." These proposals were summarily rejected by the League negotiators, although no one denied the Union's accusation of a relationship between BLT and the Dodgers. The parties eventually negotiated a new clause entitled "Experimental Touring Program," which consisted of a certain conditions where a tour could qualify for lower wages and other benefits, than are required in the production contract.

Thus the Union argues that it needed the requested information in order to assist it in the negotiations, and if it had the information and was able as a result of such information, to argue more intelligently concerning the relationship between BLT and the Dodgers, that it might have had more success in arguing for acceptance of its preservation of work proposal.

Respondent makes several arguments in response to the position of Equity and the General Counsel on these issues. With respect to the possible grievance, as testified to by Equity, Respondent contends that as "a matter of Law," Respondent could not have violated the contract, and therefore the information is not relevant. In this regard, Respondent makes several arguments. They include that Respondent has only first-class rights to produce shows, that BLT has only second-class rights, and that rights derived by BLT for their productions, were obtained directly from the rights holders. Therefore, the Dodgers could not have diverted any work to BLT, and the Union has no possible grievance to file. Further, Respondent asserts that the production contract applies only to "first-class" tours, and all of BLT's tours, including *42nd Street* were "second-class" tours. Therefore, even if an alter-ego relationship was established between Respondent and BLT, there can be no contract violation. Finally, Respondent asserts that rule 8, the provision relied on by the Union, applies only to contracts of employment between actors and producers, and has no bearing on contract coverage issues. The problem with all of these contentions is that they are largely irrelevant to the issue before me. Respondent has misperceived my role in this case. I am not acting as an arbitrator, and need not and do not decide whether a contract violation would be found, if an alter ego or other relationship was established. Indeed what Respondent is asking me to do is to make a determination on the merits that the Union did not establish a contract violation. Such a decision by me would be error, since such a determination properly rests with the arbitrator. *Shoppers Warehouse*, supra at 260.[42] The Board does not pass on the merits of the Union's claim that the contract may have been violated. *Schrock Cabinet Co.*, 339 NLRB 182 fn. 6 (2003); *Cannelton Industries*, supra, at 1005*; Public Service Gas*, supra at 1182; *Reiss Viking*, supra; *Crowley Marine v. NLRB*, supra, 234 F.3d at 1297.

The Board need only decide whether the information sought has some "bearing" on these issues, or would be of use to the union. *Crowley v. NLRB*, supra*; George Koch*, supra at 699; *Associated General Contractors of California*, 242 NLRB 891, 893–894 (1979), enfd. 633 F.2d 766, 779–772 (9th Cir. 1980); *Pfizer Co.*, 268 NLRB 916, 917 (1984). See also *Detroit Newspaper Union Local 13 v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979).

Thus I need only find here, which I do, that the information requested by the Union has "some bearing" on its assertion that Respondent may have violated the contract between it and the Union.

I also conclude based on examination of the record that I cannot find as "a matter of law," that the contract has not been violated, since the evidence on this issue is murky and uncertain, and susceptible of more than one interpretation.

While the testimony of Respondent's witnesses, Morse and Popper, with respect to first-class and second-class rights is essentially undisputed, the conclusion that Respondent seeks to draw from such testimony is uncertain. Thus, Respondent contends that it could not have diverted work to BLT, since it only has first-class rights and BLT obtained only second-class rights. However, the record shows, and Morse admitted that Respondent had at one time second-class rights to *Tommy*, as well as for other shows like *Good Vibrations* and *Dracula.*

Respondent's principal contention, that the Production Contract does not apply to second-class tours, and then BLT produces only second-class tours, received some support from the mutually corroborative testimony of Morse and Popper. It is further supported by the admission made by Stamatiades that there is certain kind of tour, phrased as an "itty bitty tour," which Equity does not seek to cover. She further conceded that the BLT tour of *Tommy* could be construed as such a tour, and that such tours are characterized by visiting more than two cities per week.

On the other hand, there is other evidence in the record, tending to support Equity's position that the production contract applies to any productions, including both first- and second-class tours. The most important evidence supporting this assertion is simply the wording of the recognition clause of the contract which makes no distinction between first and second-class productions, and purports to cover "all" employees in the specified job classifications. Further, the contract also contains a clause entitled "split-week" tours, which gives certain concessions to tours meeting the criteria set forth therein. Since Morse testified that "split-weeks" are one of the hallmark of second-class tours, a strong argument can be made by Equity, that the fact that parties bargained about and agreed to the "split-week' provision is an indication that they considered second-class tours to be covered by the contract.

While as noted, both Morse and Popper testified that in their

[42] See also *P. R. Mallory & Co.*, 272 NLRB 457, 458 (1968), where the Board reversed an ALJ's dismissal of a complaint based on an information request, and observed "we are not concerned in this case with the merits of the Union's grievance."

view, the production contract does not cover second-class tours, neither witness presented any evidence that any Equity representative ever agreed to that interpretation. Respondent did submit into evidence, letters sent to Equity, by Harriet Slaughter, the director of labor relations for the League, dated November 21, 2000, January 23, 2002, and August 7, 2003, which updated the list of League members, and included a statement that the members is bound by the contract, "when producing first-class performances." Equity did not respond to the first three of these letters. Respondent appears to contend that the failure to so respond, constitutes acquiescence in the League's position. This is an argument that could be made, and has some resonance, but on the other had, as correctly pointed out by Charging Party and General Counsel, these letters were all sent after negotiations for the 2000 contract had concluded. Moreover, a March 7, 2001 letter sent by Slaughter to the Union, also updating League membership, made no mention of the first-class production issue. Most significantly of all, prior to the start of the 2004 negotiations, the Union's attorney sent a letter, dated January 27, 2004, to Popper, disputing the characterization of the unit, set forth in the prior letters, and stating Equity's position that as per the recognition clause, the contract covers the productions for "all purposes." This position was reiterated by Equity during bargaining, and the League made no attempt to change the recognition clause during the negotiations.

Moreover, as also pointed out by Charging Party, the Dodgers had withdrawn from membership in the League in 2001, and no letter such as was sent by the League mentioning first-class productions, was sent to Equity by the Dodgers. Finally, Charging Party argues that any possible doubts about the scope of the Equity-Dodger bargaining unit, are resolved by the latest agreement signed between Equity and Respondent. The parties signed a *Jersey Boys* independent agreement, in 2005, by which Respondent agrees to recognize Equity as the collective-bargaining representative for all actors and other classifications, employed by producers in all of producer's productions wherever they may take place. According to Charging Party, this clause expands the coverage of Respondent's employees over and above the coverage in the production contract, and makes no limitations as to first or second-class productions. Respondent of course could make the argument that this agreement applies only to *Jersey Boys* productions, but that issue as well as the other matters raised by Respondent in its defense, should be raised before an arbitrator.

Similarly, the record contains substantial amounts of testimony from Morse, Popper, and Stamatiades, as well as numerous exhibits concerning issues of how to define first-and second-class tours, and whether particular productions of the Dodgers and BLT should be characterized in either category. I have recounted that evidence in the facts, and shall not repeat that evidence here. Nor do I find it necessary or appropriate to resolve the conflicting testimony between the witnesses of Respondent and Equity as to this issue. I will note however that the definition of first and second-class tours is not entirely clear, and the record is somewhat confusing, particularly since a number of cities and venues, such as Palm Desert, California, Tulsa, Oklahoma, West Palm Beach, Florida, and Providence, Rhode Island, were played by both BLT's *42nd Street* tour, characterized by Morse as a second-class tour, and by other alleged first-class tours of the Dodgers. Similarly, various other cities and venues, such as Philadelphia, Pennsylvania, St. Louis, Missouri, New Orleans, Louisiana, Detroit, Michigan, Buffalo, New York, Rochester, New York and New Haven, Connecticut, were places where both Dodgers alleged first-class tours, and BLT's alleged second-class tours gave performances. Further, as pointed out by Charging Party and General Counsel, the BLT tours of *Music Man* and *Miss Saigon* appear to be even under Morse's definition, first-class tours, since they played longer engagements in "first-class" cities.

Of course other evidence presented by Respondent, which I have recounted above in the facts, supports Respondent's position as to the distinction between second and first-class tours, and their position that Respondent produces first-class tours and that BLT generally produces second-class tours.

Respondent also asserts that rule 8 in the Production Contract, applies only to contracts of employment between Actors and Producers, and relies on the admission of Stamatiades to this effect. Once again this is an argument that should be made to the arbitrator, who could accept that interpretation, or instead find the clause applicable to the contract in general. However, even absent a specific clause, such as rule 8, Equity would be able to make a plausible argument to an arbitrator, that if an alter-ego relationship between BLT and Respondent is established, employees of BLT, automatically by operation of law, become employees of Respondent, and are thereby covered by the contract. Indeed, in many of the cases that I have cited above, the decisions contained no reference to any specific clauses binding alter-ego employers to the contract. Yet, the Union's were found to be entitled to the information requested, to enable it to make the assertions to an arbitrator that the contract applied to the employees of the alleged alter-ego employer.[43]

I shall not recount any more of the evidence with respect to the issues of contract coverage, except to conclude that as detailed above, both sides have adduced credible evidence in support of their respective positions. I emphasize, once more, that I need not and do not find it essential or even appropriate to resolve these issues, or to offer an opinion, as to which side's argument are more persuasive. Consistent with the precedent that I have cited above, this is not for me or the Board to decide, but for an arbitrator, in the event the Union chooses to file a grievance. I need only find, which I do the Union has established a nonfrivolous position that if an alter-ego relationship is found to exist between BLT and the Dodgers, that a violation of the contract can be found. I do conclude that the arguments presented by Charging Party as to that position is more than nonfrivolous, but reasonable and plausible.

Therefore, I find that Respondent has not established its defense that "as a matter of law," Respondent could not be found to have violated the contract. Therefore the Union has established the relevance of the information requested, and I find that Respondent has violated Section 8(a)(1) and (5) of the Act, by failing to supply such information to the Union.

I also conclude, in agreement with General Counsel and Charging Party, that the record discloses that the Union also established the relevance of the information requested for negotiations. In that regard, it is undisputed that the Union expressed its concerns during the negotiations in 2004 that work was being diverted by League members and negotiators, such

[43] See, for example, *Cannelton Industries*, supra at 1003; *CEC Inc., supra; Oklahoma Fixtures*, supra*; Hebert Industrial*, supra*; Pence Construction*, supra.

as the Dodgers and other firms to non-Equity companies such as BLT, who were producing non-Equity tours. In that connection, Equity also asserted there was a relationship between Respondent and BLT, as well as between certain League members and other companies. In response to these concerns, Equity presented a proposal entitled, "Preservation of Work." This proposal was not accepted, nor did it produce much discussion, other than derisive comments by League Negotiators. The parties eventually agree on a proposal entitled "Experimental Touring Program," which detailed conditions where League members could qualify for certain concessions from the Production Contract on tours.

Stamatiades testified that since it became clear during negotiations that Equity was not going to receive the information about relationships between the companies that it was seeking, "It became difficult if not impossible to continue to argue these proposals." The above evidence is more than sufficient to conclude, which I do that the Union has established the relevance of the information requested for negotiations, clearly a function of the Union's responsibilities as collective-bargaining representatives. *Shoppers Warehouse,* supra, 259–260; *George Koch,* supra, 695 and 699 and at 950 F.2d at 1334; *Leland Stanford Junior University*, 262 NLRB 136, 155 (1982).[44]

Respondent's arguments in response to this contention have absolutely no merit. It argues that the evidence discloses that the proposals advanced by the Union at negotiations were "so off target that they were withdrawn by Equity without either any discussion or substantive response by the League." Thus Respondent asserts that Equity did not need any information concerning the relationship between Equity and the Dodgers, and "the information Equity needed, should have requested, and obviously requested from the League, was information on first-class touring, including information concerning guarantees, cost and crew sizes, travel, recoupment, advertising and the like." However, it is not up to Respondent to decide what information Equity needed or should have requested. As long as the Union has demonstrated a plausible relevant reason for the request, which it has done, the Union is entitled to receive the information from Respondent. The fact that the Union may have withdrawn its proposal does not render the issue irrelevant to negotiations. *Shoppers Warehouse, supra* at 260. As Stamatiades credibly testified, had the Union had the information that it requested from Respondent, it might have been able to muster stronger arguments in support of its proposals to remedy its concerns about diversion of work.

Accordingly, I conclude that the Union has also established the relevancy of the information it requested for use in negotiations, and that this constitutes an additional reason, that Respondent has violated Section 8(a)(1) and (5) of the Act by failing to supply such information to the Union.

CONCLUSION OF LAW

1. The Respondent, Dodger Theatricals Holdings Ltd. Is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Actors' Equity Association is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to provide the Union with the information requested in its letter dated December 19, 2003, as modified subsequently by the Union to cover information for the period after to March 29, 2002, Respondent has violated Section 8(a)(1) and (5) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[45]

ORDER

The Respondent, Dodger Theatricals Holdings LTD, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Actors' Equity Association, by refusing to furnish it with information that it requests which is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish the Union with the information it requested in its letter of December 19, 2003, as modified subsequently by the Union to cover information for the period after to March 29, 2002.

(b) Within 14 days after service by the Region, post at its New York, New York facility copies of the attached notice marked "Appendix."[46] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 19, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., March 28, 2006.

[44] Although the 2004 contract has been negotiated and agreed on, the issue is not moot, since by the time this case is finally decided by the Court of Appeals, it could very well be time to negotiate a new agreement.

[45] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[46] If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Actors' Equity Association, by refusing to furnish it with information that it requests which is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL promptly furnish the Union with the information it requested in its letter of December 19, 2003, as modified subsequently by the Union to cover information for the period after to March 29, 2002.

DODGER THEATRICALS HOLDINGS, LTD.